

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES ARTHUR HARRISON,

Defendant-Appellee.

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UNPUBLISHED

November 25, 1997

No. 196243

Oakland Circuit Court

LC No. 91-113098 FC

Before: McDonald, P.J., and Wahls and J. R. Weber\*, JJ.

MEMORANDUM.

On prior appeal of right, No. 185099, defendant's plea-based conviction of assault with intent to commit great bodily harm, MCL 750.84; MSA 28.279, was remanded to the Oakland Circuit Court for resentencing, based on an error in scoring offense variable 13. At the resentencing, the trial court rejected the prosecutor's proffer of additional evidence to support its original scoring decision, opining that this Court's decision left it no discretion but to sentence defendant within the sentence guidelines as calculated by this Court in its opinion. The prosecutor now appeals by right. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court does not now, and never has, scored the sentence guidelines. This is a reviewing court, and this Court's prior decision holds only that on the record as it then existed, there was inadequate basis to support the trial court's scoring decision with respect to OV 13. That decision in no way limited the trial court's discretion, on remand, to consider additional evidence and make a new scoring decision, including the same scoring decision. *People v Williams*, 208 Mich App 60, 65, 526 NW2d 614 (1994). Accordingly, the trial court's failure to recognize that it possessed discretion to determine the applicable sentence guideline range was an abuse of discretion. *People v Jackson*, 391 Mich 323, 336; 217 NW2d 22 (1974). Where, as here, new evidence is presented, the law of the case doctrine does not preclude the trial court on remand from revisiting a factual question underlying a legal determination. See *Topps-Toeller, Inc v City of Lansing*, 47 Mich App 720; 209 NW2d 843 (1973).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber